

Supreme Court, U. S.

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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1976

No. 76-780

JENNA PAULINE KELSIE,  
*Petitioner,*

v.

STATE OF INDIANA,  
*Respondent.*

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**BRIEF IN OPPOSITION TO PETITION FOR  
WRIT OF CERTIORARI TO THE SUPREME  
COURT OF INDIANA**

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Respondent, State of Indiana, respectfully prays this Court deny issuance of a writ of certiorari to the Supreme Court of Indiana, thereby refusing to review the decision entered by that Court in Cause No. 1274 S 241 on September 21, 1976.

**OPINION BELOW**

The opinion of the Indiana Supreme Court is reported at 345 N.E. 2d 219, and may be found in Petitioner's Appendix A. Petitioner's petition for rehearing in that Court was denied without opinion on November 1, 1976. See Petitioner's Appendix B.

### STATEMENT OF THE CASE

Petitioner was charged by way of indictment for the crime of Second Degree Murder. Pursuant to the opinion of the Indiana Supreme Court, Attorney Robert W. Lensing entered an appearance in the capacity of "of counsel" at the request of the prosecuting attorney, and subsequently participated with and under the supervision of the appropriate county prosecuting attorney who was present at all stages of the proceedings. Petitioner's Appendix A, Page 7. Petitioner herein objected to the participation of the attorney. It is from the overruling of Petitioner's objection to the participation by said attorney that Petitioner now asserts a denial of due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution.

### REASONS FOR DISALLOWANCE OF THE WRIT

#### I.

#### NO ERROR WAS COMMITTED BY THE PARTICIPATION OF THE OBJECTED TO ATTORNEY.

Petitioner herein argues that she was denied due process of law by the trial court overruling her objection to the participation in her trial of an attorney who was not a duly elected prosecuting attorney. In so arguing, the Petitioner states that she now, "... challenges the action of the 'special prosecutor' who took the lead in securing her conviction." Petitioner's brief, page 11. The Indiana Supreme Court specifically found from the record that the duly elected prosecuting attorney requested that the attorney be permitted to appear for the State, and that the trial court appointed him for that purpose. Further,

the Indiana Supreme Court specifically found that the objected to attorney worked with and under the supervision of the Warrick County prosecutor, who was present at all stages of the proceedings. Opinion of the Supreme Court of Indiana, Petitioner's Appendix A, page 7.

The law in Indiana has been well settled by the Indiana Supreme Court that independent of statute, trial courts have long exercised discretionary power to appoint attorneys to assist the prosecuting attorney in criminal cases. *State ex rel. Neeriemer v. Davies Circuit Court of Davies County*, (1957) 236 Ind. 624, 142 N.E. 2d 626; *Tull v. State ex rel. Glessner*, (1884) 99 Ind. 238; *Williams v. State*, (1919) 188 Ind. 283, 123 N.E. 209.

Where it is clear, as it is here, that the highest state court having jurisdiction to hear the federal question presented, and that where the decision of the State court might finally determine the issue on a state ground and not on a federal ground, this Court should not undertake to review it. However, if the independent state ground is not a sufficient or substantial one, it should be presumed that the State court based its decision on the federal question. *Durley v. Mayo*, 351 U.S. 277, 76 S. Ct. 806. There can be no doubt that the Indiana Supreme Court based its decision upon a dispositive state ground, substantially, and sufficiently. No federal question is even recognized as existing in the opinion of the Indiana Supreme Court. Therefore, in that the question raised in Petitioner's Petition for Writ of Certiorari has been adequately answered on state grounds under interpretation of state law, her petition should not be allowed.

**CONCLUSION**

WHEREFORE, Respondent respectfully submits that petitioner's alleged issue has been adequately disposed of pursuant to state grounds, and that her Petition for Writ of Certiorari should be disallowed.

Respectfully submitted,

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